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TIME WARNER ENTERTAINMENT-ADVANCE/
7 NEWHOUSE PARTNERSHIP, A NEW YORK GENERAL
PARTNERSHIP
8

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 LEON ALPERT, an individual, on behalf of
himself, on behalf of all those similarly
13 situated, and on behalf of the general public,

14 Plaintiffs,

15 v.

16 TIME WARNER CABLE, INC., a Delaware
corporation, and DOES 1 TO 100,

17 Defendants.
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CV No. 08CV582 W WMc

**AMENDED NOTICE OF MOTION AND
MOTION OF DEFENDANT TIME
WARNER CABLE FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL SUMMARY
JUDGMENT**

Date June 2, 2008
Time 10:00 a.m.
Ctrm: 7
Judge: Hon. Thomas J. Whelan

**[No Oral Argument Pursuant to
CivLR 7.1(d)(1)]**

Oral Argument Requested

Complaint: March 13, 2007
FAC: May 16, 2007
Removal: March 27, 2008

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 2, 2008 at 10:00 a.m., or as soon thereafter as can
3 be heard, in Courtroom 7 of the above-entitled Court, located at 880 Front Street, San Diego,
4 California 92101, Defendant Time Warner Entertainment-Advance/Newhouse Partnership
5 (“TWC”) will and hereby does move this Court for summary judgment or, in the alternative,
6 partial summary judgment in favor of TWC against Plaintiff Leon Alpert (“Plaintiff”).

7 This motion is made pursuant to Rule 56 of the Federal Rules of Civil Procedure because
8 Plaintiff’s claims lack merit as a matter of law. Specifically, TWC respectfully requests that the
9 Court grant summary judgment in its favor and against Plaintiff on the following grounds:

10 **Issue #1:** Plaintiff’s cause of action for violation of Business & Professions Code section
11 17200 *et seq.*, based on TWC engaging in unlawful conduct in violation of the Consumer Legal
12 Remedies Act (“CLRA”), lacks merit as a matter of law because Plaintiff cannot prove a violation
13 of the CLRA.

14 **Issue #2:** Plaintiff’s Cause of Action for Violation of Business & Professions Code
15 section 17200 *et seq.*, based on TWC engaging in unlawful conduct by breaching its agreement
16 with Sea Point Townhomes’ Home Owners’ Association (the “HOA”), lacks merit as a matter of
17 law because TWC did not breach its agreement with the HOA.

18 **Issue #3:** Plaintiff’s Cause of Action for Violation of Business & Professions Code
19 section 17200 *et seq.*, based on TWC engaging in unfair conduct by overcharging Plaintiff, lacks
20 merit as a matter of law because TWC did not overcharge Plaintiff.

21 **Issue #4:** Plaintiff’s Cause of Action for Violation of Business & Professions Code
22 section 17200 *et seq.*, based on TWC engaging in unfair conduct by requiring thirty-day
23 notification of billing errors while failing to disclose HOA pricing that accounted for HOA
24 payments, lacks merit as a matter of law because such notification terms are reasonable.

25 **Issue #5:** Plaintiff’s Cause of Action for Violation of Business & Professions Code
26 section 17200 *et seq.*, based on TWC engaging in unfair conduct by requiring thirty-day
27 notification of billing errors while failing to disclose HOA pricing that accounted for HOA

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1 payments, lacks merit as a matter of law because the notification term had no effect on Plaintiff,
2 yet has a legitimate business benefit to TWC.

3 **Issue #6:** Plaintiff's Cause of Action for Violation of Business & Professions Code
4 section 17200 *et seq.*, based on TWC engaging in unfair conduct by requiring thirty-day
5 notification of billing errors while failing to disclose HOA pricing that accounted for HOA
6 payments, lacks merit as a matter of law because TWC did not fail to disclose such pricing.

7 **Issue #7:** Plaintiff's Cause of Action for Violation of Business & Professions Code
8 section 17200 *et seq.*, based on TWC engaging in unfair conduct by breaching its agreement with
9 the HOA, lacks merit as a matter of law because TWC did not breach its agreement with the
10 HOA.

11 **Issue #8:** Plaintiff's Cause of Action for Violation of Business & Professions Code
12 section 17200 *et seq.*, based on TWC engaging in misleading conduct by overcharging Plaintiff,
13 lacks merit as a matter of law because TWC did not overcharge Plaintiff.

14 **Issue #9:** Plaintiff's Cause of Action for Violation of Business & Professions Code
15 section 17200 *et seq.*, based on TWC misleading Plaintiff regarding when he was required to
16 notify TWC of billing errors by hiding notification requirements and failing to disclose HOA
17 pricing that accounted for HOA payments, lacks merit as a matter of law because the notification
18 term was included in Plaintiff's contract and on every invoice sent to Plaintiff.

19 **Issue #10:** Plaintiff's Cause of Action for Violation of Business & Professions Code
20 section 17200 *et seq.*, based on TWC concealing HOA pricing that accounted for HOA payments,
21 lacks merit as a matter of law because TWC did not fail to disclose such pricing.

22 **Issue #11:** Plaintiff's Cause of Action for Violation of Business & Professions Code
23 section 17200 *et seq.*, based on TWC misrepresenting its affiliation, connection, or association
24 with the HOA, lacks merit as a matter of law because TWC made no such misrepresentations.

25 **Issue #12:** Plaintiff's Cause of Action for Violation of Business & Professions Code
26 section 17200 *et seq.*, based on TWC misrepresenting the reason for the decrease in Plaintiff's bill
27 for Additional Services after he changed his services to a bundled package, lacks merit as a matter
28 of law because TWC made no such misrepresentations.

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